

Jun 24, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GRANDPA BUD, LLC, a
Washington limited liability
company,

Plaintiff,

v.

CHELAN COUNTY WASHINGTON,
a municipal corporation,

Defendant.

NO: 2:19-CV-51-RMP

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles, and it does not
2 presumptively entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible
5 things produced or otherwise exchanged: Plaintiff’s financial and tax records,
6 business strategies, and methods.

7 3. SCOPE

8 The protections conferred by this agreement cover not only confidential
9 material (as defined above), but also (1) any information copied or extracted from
10 confidential material; (2) all copies, excerpts, summaries, or compilations of
11 confidential material; and (3) any testimony, conversations, or presentations by
12 parties or their counsel that might reveal confidential material. However, the
13 protections conferred by this agreement do not cover information that is in the
14 public domain or becomes part of the public domain through trial or otherwise.

15 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

16 4.1 Basic Principles. A receiving party may use confidential material that is
17 disclosed or produced by another party or by a non-party in connection with this
18 case only for prosecuting, defending, or attempting to settle this litigation.

19 Confidential material may be disclosed only to the categories of persons and under
20 the conditions described in this agreement. Confidential material must be stored
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1 and maintained by a receiving party at a location and in a secure manner that
2 ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the designating party, a
5 receiving party may disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as
7 employees of counsel to whom it is reasonably necessary to disclose the
8 information for this litigation;

9 (b) the representatives, officers, directors, and employees (including
10 in house counsel) of the receiving party to whom disclosure is reasonably
11 necessary for this litigation, unless the parties agree that a particular document or
12 material produced is for “Attorney’s Eyes Only” and is so designated;

13 (c) experts and consultants to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the
18 duplication of confidential material, provided that counsel for the party retaining
19 the copy or imaging service instructs the service not to disclose any confidential
20 material to third parties and to immediately return all originals and copies of any
21 confidential material;

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
4 party or ordered by the court. Pages of transcribed deposition testimony or
5 exhibits to depositions that reveal confidential material must be separately bound
6 by the court reporter and may not be disclosed to anyone except as permitted under
7 this agreement;

8 (g) the author or recipient of a document containing the information or
9 a custodian or other person who otherwise possessed or knew the information.

10 4.3 Filing Confidential Material. Before filing confidential material or
11 discussing or referencing such material in court filings, the filing party shall confer
12 with the designating party to determine whether the designating party will remove
13 the confidential designation, whether the document can be redacted, or whether a
14 motion to seal or stipulation and proposed order is warranted.

15 5. DESIGNATIVE PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each party or non-party that designates information or items for protection under
18 this agreement must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The designating party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify, so that other portions of the material, documents,

1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited.

4 Designations that are shown to be clearly unjustified or that have been made for an
5 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development
6 process or to impose unnecessary expenses and burdens on other parties) expose
7 the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it
9 designated for protection do not qualify for protection, the designating party must
10 promptly notify all other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
13 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
14 protection under this agreement must be clearly so designated before or when the
15 material is disclosed or produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic
17 documents and deposition exhibits, but excluding transcripts of depositions or
18 other pretrial or trial proceedings), the designating party must affix the word
19 "CONFIDENTIAL" to each page that contains confidential material. If only a
20 portion or portions of the material on a page qualifies for protection, the producing
21

1 party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial or trial
4 proceedings: the parties must identify on the record, during the deposition, hearing,
5 or other proceeding, all protected testimony, without prejudice to their right to so
6 designate other testimony after reviewing the transcript. Any party or non-party
7 may, within fifteen days after receiving a deposition transcript, designate portions
8 of the transcript, or exhibits thereto, as confidential.

9 (c) Other tangible items: the producing party must affix in a
10 prominent place on the exterior of the container or containers in which the
11 information or item is stored the word "CONFIDENTIAL." If only a portion or
12 portions of the information or item warrant protection, the producing party, to the
13 extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the designating party's right to secure protection under this agreement for such
17 material. Upon timely correction of a designation, the receiving party must make
18 reasonable efforts to ensure that the material is treated in accordance with the
19 provisions of this agreement.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any party or non-party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 designating party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption
6 or delay of the litigation, a party does not waive its right to challenge a
7 confidentiality designation by electing not to mount a challenge promptly after the
8 original designation is disclosed.

9 6.2 Meet and Confer. The parties must make every attempt to resolve any
10 dispute regarding confidential designations without court involvement. Any
11 motion regarding confidential designations or for a protective order must include a
12 certification, in the motion or in a declaration or affidavit, that the movant has
13 engaged in a good faith meet and confer conference with other affected parties in
14 an effort to resolve the dispute without court action. The certification must list the
15 date, manner, and participants to the conference. A good faith effort to confer
16 requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
18 court intervention, the designating party may file and serve a motion to retain
19 confidentiality under Local Rule 7.1. The burden of persuasion in any such motion
20 shall be on the designating party. Frivolous challenges, and those made for an
21 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall
2 continue to maintain the material in question as confidential until the court rules on
3 the challenge.

4 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
5 IN OTHER LITIGATION; PUBLIC RECORDS REQUESTS

6 If a party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this action as
8 “CONFIDENTIAL,” that party must:

9 (a) promptly notify the designating party in writing and include a copy
10 of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or
12 order to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this agreement. Such notification shall include a
14 copy of this agreement; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the designating party whose confidential material may be affected.

17 The parties acknowledge that defendant Chelan County is a public agency
18 subject to Washington's Public Records Act (“PRA”), Wash. Rev. Code §§ 42.56.

19 This agreement does not supersede Chelan County's obligations under the PRA. If
20 defendant Chelan County receives a public records request under the PRA for any
21

1 information or items designated in this action as “CONFIDENTIAL” that Chelan
2 County determines to be non-exempt public records, Chelan County must:

3 (a) promptly provide third-party notice to the designating party in
4 writing and include a copy of the public records request; and

5 (b) allow the designating party no less than ten (10) calendar days in
6 which to obtain an order from the superior court enjoining Chelan County from
7 producing the records; and

8 (c) absent an order enjoining the production of the records, disclose or
9 produce non-exempt public records as required by the PRA no sooner than ten (10)
10 days after giving third-party notice of the public records request to the designating
11 party.

12 The production by Chelan County of any non-exempt public records
13 designated as “CONFIDENTIAL” in this matter, consistent with this Section 7, in
14 response to a public records request shall not be a breach of this agreement.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
17 confidential material to any person or in any circumstance not authorized under
18 this agreement, the receiving party must immediately (a) notify in writing the
19 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
20 all unauthorized copies of the protected material, (c) inform the person or persons
21 to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound,” Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a producing party gives notice to receiving parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the receiving parties are those set forth in Federal
8 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
9 whatever procedure may be established in an e-discovery order or agreement that
10 provides for production without prior privilege review. Parties shall confer on an
11 appropriate non-waiver order under Federal Rule of Evidence 502.

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals,
14 each receiving party must return all confidential material to the producing party,
15 including all copies, extracts and summaries thereof. Alternatively, the parties
16 may agree upon appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival
18 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
19 correspondence, deposition and trial exhibits, expert reports, attorney work
20 product, and consultant and expert work product, even if such materials contain
21 confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO ORDERED. The District Court Clerk is hereby directed to enter this Order and to provide copies to counsel.

DATED this June 24, 2019.

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 United States District Judge